



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. **82R-296**
 ROBERT R. SCHRAM)

For Appellant: Jerrold N. Offstein
Attorney at Law

For Respondent: Kendall E. Kinyon
Assistant Chief Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Robert R. **Schram** for refund of personal income tax in the amounts of \$1,964, \$2,427, and \$2,814 for the years 1978, 1979, and 1980, respectively.

17 Unless otherwise specified, **all section references**
are to sections of the Revenue and Taxation Code as in
effect for the years in issue.

Appeal of Robert R. Schram

The sole issue for consideration in this appeal is whether appellant, a merchant seaman, was a resident of California during the appeal years.

Appellant is an unmarried merchant seaman with no dependents. He was educated and trained for his profession outside of California. During the years in question, appellant belonged to, and paid dues to, a union located in California. Although his voyages did not originate or terminate in California, he regularly returned to California between voyages. Specifically, appellant spent 12 percent of his time in California during 1978, 28 percent in 1979, and 1 percent in 1980. With the exception of a few days of travel time at the beginning and end of each voyage, the remainder of his non-sea time was spent in **California**. He resides in a mobile home and owns two unimproved lots located in California. He maintains checking and savings accounts in a federally-chartered bank located in California. During the appeal years, appellant registered and owned a motor vehicle located in California. He did not have a California driver's license nor any other permit, or license and had no business, professional, or personal memberships in California. Appellant was not registered to vote and did **not** vote in California during the years in question.

Appellant admits that during the years in question, he was domiciled in **California**. However, he contends that during the relevant periods, he was a domiciliary who was absent from this state for other than a temporary or transitory purpose and thus was not a resident of this state within the meaning of section 17014.

In urging that appellant was a resident of California during the appeal years, respondent relies on the definition of the term "**resident**" found in section 17014.

Section 17014 defines the term "resident" to include:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who **is** outside the state for a temporary or transitory purpose.

Appeal of Robert R. Schram

* * *

(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.
(Emphasis added.)

Although appellant was physically present in California for only short periods of time, he enjoyed substantial benefits and protections from the laws and government of this state, a factor indicative of residence. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.) When not at sea, he resided in a mobile home located in California. He owned real estate and did his banking in this state. His car was registered here and he **stored** his car and presumably other personal **property** in California whenever he was absent. Such close connections with this state warrant a conclusion that appellant's absences were temporary or transitory, and that he was therefore a California resident during the years at issue. (Appeal of Bernard and Helen Fernandez, supra; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal. - July 6, 1971.)

Appellant mistakenly relies on the Appeal of Richard W. Vohs, decided by this board on September 17, 1973, and affirmed on rehearing June 3, 1975, and the Appeal of Thomas J. Tuppein, decided by this board on May 4, 1976. Both these cases involved seamen who did **not** maintain family homes in California. We held both to be nonresidents.

Taking into consideration all of the relevant facts and circumstances, we believe that Vohs and Tuppein are distinguishable from the instant appeal. In contrast to appellant, neither Mr. Vohs nor Mr. Tuppein owned any type of residence in California. Neither owned any real property or had any other significant business interests in this state. Neither registered a vehicle in this state. Appellant, on the other hand, owns and resides in a mobile home located in this state, owns real estate in this state, and registers and stores a motor vehicle in this state, all factors indicative of some permanence.

We agree with respondent's position that the Appeal of Duane H. Laude, decided by this board on October 6, 1976, is controlling. The facts in this appeal parallel the facts in Laude, supra. Like Laude,

Appeal of Robert R. Schram

appellant owned real property in this state and registered and owned a personal vehicle in California. Additionally, and most significantly, appellant owned and resided in a mobile home in California between voyages which gives rise to an even stronger conclusion that he was outside California temporarily for employment purposes only and that he received the full benefits and protections of this state so as to justify imposing the tax burden. Appellant's attempts to distinguish his residence as a mobile home as being less permanent than **Laude's** apartment is without merit, Certainly in this day and age when mobile homes have reached a size where they are virtually never moved or moved only at great **expense**, this argument lacks **substance**.

Appellant also argues that due to the great number of days he spent outside the state, his life like that of the taxpayer in the Appeal of Vohs, supra, is "characteristic in its impermanence." We do not agree. **The** fact that appellant returned to his mobile home between each **voyage**, albeit even for short periods of time, is in itself, a sign of permanence. Also, the fact that when he was outside this state, he was on a voyage **and** working rather than vacationing or residing in some other state or country is significant in supporting our finding of permanence rather than the impermanence appellant suggests.

For the **reasons** stated above, respondent's action is 'sustained,

Appeal of Robert R. Schram

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Robert R. Schram for refund of personal income tax in the amounts of \$1,964, \$2,427, and \$2,814 for the years 1978, 1979, and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day Of September, 1985, by the State Board of **Equalization**, with Board Members Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

Richard Nevins, Member

Walter Harvey*, Member

_____, Member

_____, Member

*For Kenneth Cory, per Government Code section 7.9